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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re VIVIANA G. et al., Persons Coming Under
the Juvenile Court Law.

STANISLAUS COUNTY COMMUNITY
SERVICES AGENCY,

Plaintiff and Respondent,

v.

GEORGE G. et al.,

Defendants and Appellants.

In re VIVIANA G. et al., Persons Coming Under
the Juvenile Court Law.

STANISLAUS COUNTY COMMUNITY
SERVICES AGENCY,

Plaintiff and Respondent,

v.

GEORGE G. et al.,

Defendants and Respondents,

VIVIANA G. et al.,

Appellants.

F077532

(Super. Ct. Nos. 515527, 515528,
515529, 515718, 517877)

F077725

(Super. Ct. Nos. 515527, 515528,
515529, 515718, 517877)

OPINION

APPEALS from an order of the Superior Court of Stanislaus County. Ruben A. Villalobos, Judge.

David M. Thompson, under appointment by the Court of Appeal, for Defendant and Appellant, and Defendant and Respondent George G.

Gregory M. Chappel, under appointment by the Court of Appeal, for Defendant and Appellant, and Defendant and Respondent Christina R.

Mary Elizabeth Handy, under appointment by the Court of Appeal, for Appellants Viviana G., Noel G., and George G.

John P. Doering, County Counsel, and Jeremy Meltzer, Deputy County Counsel, for Plaintiff and Respondent.

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On April 20, 2018, the juvenile court terminated the parental rights of Christina R. (mother) and George G., Sr. (father) over their now eight- and six-year-old sons Nathaniel G. and Fabian G. respectively. In this consolidated appeal, mother and father contend the court erred in ruling they failed to establish the beneficial parent-child relationship exception to adoption. (Welf. & Inst. Code, § 366.26, subd. (c)(1)(B)(i).)¹ Father and the older siblings, Viviana G., Noel G., and George G., Jr. (appellant minors), contend the court erred in ruling they failed to establish the sibling relationship exception. (§ 366.26, subd. (c)(1)(B)(v).) Appellants join in each other's arguments.² We affirm.

PROCEDURAL AND FACTUAL SUMMARY

Father and mother have five minor children: a daughter Viviana G., now 16 years old, and sons Noel G., 14, George G., Jr. (George), 12, Nathaniel, and Fabian. They also have a 20-year-old son, Isaac R., and mother has a 19-year-old son, Joseph R., from another relationship. The family has a long history of child neglect as well as physical

¹ Statutory references are to the Welfare and Institutions Code.

² We grant appellants' requests to join in the arguments made in each other's briefs.

and sexual abuse, dating back to 2003 and involving multiple juvenile dependency proceedings. The current case was initiated by the Stanislaus County Community Services Agency (agency) in February 2017.

Prior Dependency Proceedings

The family first came to the agency's attention in 2003 regarding an allegation that father sexually molested mother's younger sister. That same year, the agency substantiated a report that mother exposed the children to their maternal grandfather who sexually abused his own children, including mother. Mother accepted voluntary family maintenance services, including drug treatment for her methamphetamine use, but did not utilize the services. The agency closed the case in May 2004, despite her lack of progress because the children were stable.

The agency continued to receive reports over the years of drug use, domestic violence, and child abuse and neglect. In April 2009, then six-year-old Viviana reported father took her into the bedroom while mother was at work and described in detail how he sexually molested her. The agency was unable to substantiate her allegations but offered the parents voluntary family maintenance services to address their other issues. When the parents failed to utilize the services, the agency took the children into protective custody and filed an original petition under section 300, subdivision (b) (failure to protect).

In October 2009, Viviana, while being examined at a clinic for vaginal discharge, reported that father penetrated her vagina and rectum. She was formally interviewed and described in more graphic detail the circumstances in which the molestation occurred, and the way father molested her. She stated that mother walked in on one of those occasions and took her briefly to her maternal grandmother's home. The maternal grandmother said she suspected father was molesting Viviana and believed that mother was aware of the sexual abuse.

In January 2010, the agency filed a subsequent petition (§ 342) based on the allegations of sexual molestation. The juvenile court did not find the allegations true but added sexual abuse counseling to the parents' reunification plans. At the 12-month review hearing, the court terminated father's reunification services and ordered his contact with the children to be supervised and agency-approved. In April 2010, mother gave birth to Nathaniel and the agency took him into protective custody.

Father eventually moved back into the family home in violation of the juvenile court's order. In June 2010, then two-month-old Nathaniel was returned to mother on a trial visit. In December 2010, the court terminated mother's reunification services, established a legal guardianship for then 12-year-old Isaac, 11-year-old Joseph, eight-year-old Viviana, six-year-old Noel, and four-year-old George with their maternal aunt and uncle and dismissed dependency. Fabian, born in February 2013, was not removed from parental custody.

In September 2012, the legal guardians were arrested for felony child abuse for physically abusing and torturing the children. The agency filed a dependency petition alleging multiple statutory grounds for removal, including cruelty. The juvenile court terminated the guardianship, reinstated dependency and ordered Isaac, Joseph, Viviana, Noel, and George into long-term foster care. However, they did not do well in that setting; several were acting out sexually and one of them was stealing. Meanwhile, mother was attempting to regain custody of them. In January 2014, the juvenile court reopened family reunification and provided therapeutic visits and family counseling.

In July 2014, at a post-permanency plan review hearing (§ 366.3), the agency proposed that the juvenile court return the children to parental custody and terminate its jurisdiction. The children had been in their parents' custody on a trial basis for a month and the parents agreed to work with the agency on a voluntary basis. However, before the matter was heard the family began to unravel, causing the agency to change its recommendation. Isaac ran away after he and father hit each other, the children did not

have adequate clothing and the parents were relying on the agency for financial help. In December 2014, the court dismissed its dependency jurisdiction. Before it did, the agency received referrals that one of the children ran to a neighbor's house because he believed father was going to beat him and Viviana was seen with fingerprint-shaped bruises. She did not disclose how she received them.

The agency continued to receive reports concerning the family over the next three years. Viviana reported father purchased marijuana and alcohol for Isaac and Joseph. Isaac and Joseph stated they wanted to return to foster care rather than stay with mother who was reportedly homeless. In 2015, Isaac stated he wanted to jump off a bridge because father pushed and punched him. In 2016, the agency received reports of physical altercations between the parents and teenagers, including punching and slapping in the face.

Current Dependency Proceedings

These proceedings were initiated in February 2017, after then 14-year-old Viviana disclosed that father watched her and masturbated while she showered. Emergency Response Social Worker Adriana Ocampo attempted immediately to speak to the parents in person at their home. She left a business card asking them to contact her after no one answered the door. Mother, angry that Ocampo tried to contact her, telephoned her and said she could not talk that day because she was trying to get Viviana to return home. Mother was vulgar and yelled. Shortly after, mother accidentally called Ocampo's phone number and Ocampo heard her tell Viviana to "fix all of this with the social worker because all of this is happening due to what you reported." Viviana then called Ocampo, stating she would not talk to her. Viviana was also upset and yelled and cursed at Ocampo.

The following day, Modesto Police Detective John Locke told Ocampo he spoke to Viviana by telephone and she told him that father masturbated while he watched her shower. She begged him to believe her.

Ocampo met with several of the children at their schools. Twelve-year-old Noel stated that Isaac saw father watching Viviana shower a year before. Isaac told mother, but she did not believe him or do anything about it. Noel was afraid to disclose any more information, fearing the agency would place him in foster care where he would be abused again.

Seventeen-year-old Joseph disclosed that Viviana recently told him and Isaac about father masturbating and watching her shower. She also said father continued to molest and rape her. Joseph had seen father kissing Viviana's chest and caught father and Viviana lying in bed with the door closed. He said father constantly allowed Viviana to get her way and Viviana and mother fought over father. Joseph said he, Isaac and Viviana confronted their parents over the allegations of sexual abuse and mother told them she was going to choose father over them. They also begged mother to kick father out of the house, but she refused.

Joseph was also concerned that his parents were using drugs because he found a "dope" pipe in the home. He said mother was home when Ocampo attempted to talk to them the day before but actively avoided her because mother knew the agency would remove them. He did not believe his parents were properly caring for his siblings because they were often hungry and wore clothes that were dirty, too small or inappropriate for the weather. Mother inappropriately disciplined them and often got into physical fights with Viviana over what appeared to be jealousy over father. Joseph said he had been staying at his girlfriend's house because the environment at home was so "toxic."

Later that day, the juvenile court issued a protective warrant for the children. When Ocampo and the sheriff's deputies went to the house to serve the warrant, only Joseph was home. Mother left with the other children.

Ocampo and the deputies entered and assessed the home. There was a strong smell of marijuana and urine. The house was cluttered, the carpets were stained and

discolored with food and dirt and the walls were streaked with unidentifiable substances. Joseph called Viviana and she agreed to return home for an interview. Viviana confirmed the sexual abuse but did not want to discuss it. She refused to be taken into protective custody and ran away. The parents also returned to the house and Ocampo took the four younger children into protective custody.

The agency filed a dependency petition on behalf of Joseph, Viviana, Noel, George, Nathaniel, and Fabian under section 300, subdivisions (b) (failure to protect), (d) (sexual abuse) and (j) (abuse of sibling), and placed Viviana and Fabian in two separate foster homes, Joseph and George together in a foster home, and Noel and Nathaniel together in yet another.

The juvenile court ordered the children detained pursuant to the petition and ordered closely monitored visits. The court ordered the parents not to discuss the case with Viviana who was still on a runaway status. The agency provided the parents referrals for clinical assessments, parenting classes, co-dependency, individual and couples counseling and hair follicle testing.

On February 28, 2017, Viviana participated in a child abuse interview. She recounted how father masturbated while watching her through their glass-enclosed shower. Sometimes they made eye contact, but father continued masturbating. She said father's "jacking off" hurt her and she often ran away from home because of what he was doing to her. She confronted him about his inappropriate behavior and he apologized but did not stop. She also confronted mother, but mother made herself a victim of the situation instead of protecting Viviana.

In its jurisdictional and dispositional reports, the agency recommended the juvenile court exercise its dependency jurisdiction and deny both parents reunification services because they continued to deny that Viviana was the victim of sexual abuse and demonstrated no legitimate concern for the well-being of their children. The agency also reported that Viviana had recanted her statements made to her brothers, the detective,

Ocampo and the child abuse interviewer. The agency opined that her concern for her siblings may have motivated her to recant.

On May 4, 2017, the agency submitted the child abuse interview as a written transcript and as a DVD, which was viewed in court. Afterwards, Viviana, called by mother's attorney, testified that her statements about father were not true. She made up those statements because she was mad at her parents and wanted to be heard.

The juvenile court sustained the petition in its entirety after a slight modification. In ruling, the court stated it believed Viviana's interview statements and not her testimony. The court believed she recanted out of guilt because her little brothers wanted to go home.

On August 23, 2017, the juvenile court conducted a contested dispositional hearing. By that time, Joseph had turned 18, and the court granted county counsel's motion to dismiss his case. Viviana was placed in a group home. Father testified he was a victim of sexual abuse, not a perpetrator. Mother did not believe father sexually abused the children and planned to remain an intact couple. The court ordered the children removed, denied the parents reunification services, and set a section 366.26 hearing for December 14, 2017. The court granted the agency discretion to increase the frequency and duration of the parents' once-monthly visit and the children's twice-monthly sibling visits. Mother sought extraordinary writ relief from the setting order by filing a petition (Cal. Rules of Court, rule 8.452), which we denied. (*Christina R. v. Superior Court* (Dec. 12, 2017, F076199) [nonpub. opn.])

On October 16, 2017, the agency filed a modification petition (§ 388, subd. (a)) requesting the juvenile court designate one of the children's two monthly visits as a therapeutic visit to improve the siblings' interactions. The request was prompted by the social worker's inability to redirect the children during a sibling visit on September 17, 2017. Viviana was present during the visit and yelled at her siblings who were throwing toys, running around the room, and banging on the chalk board. Viviana was talking

back to the staff and asserting that she and not the staff was in charge. The staff had to terminate the visit after less than an hour.

In November 2017, at the contested hearing on the section 388 petition, minors' counsel explained that the disruption occurred because the grandmother was present in the visitation room and left and that the children behaved better when there was an adult present. She also stated that the boys very clearly expressed their desire to have Viviana visit with them. The juvenile court granted the request for one therapeutic visit a month and ordered reasonable telephone visitation for the siblings.

In its report for the section 366.26 hearing, the agency recommended the juvenile court terminate parental rights as to Nathaniel and Fabian and select adoption as their permanent plan. The agency recommended the court continue Viviana, Noel, and George in foster care. Nathaniel and Fabian, then seven- and four-years old respectively, were doing well in the foster home of Mrs. B., who wanted to adopt them. They were placed with her in April 2017. She was Fabian's first foster home placement. Nathaniel, on the other hand, had a history with Mrs. B. He was placed with her in May 2010, as a three-week-old and remained with her until June 2010, when, at two months of age, he was returned to his parents. He was placed with Mrs. B. again in August 2011, at 15 months of age and remained with her until July 2012, when he reunified with his parents at the age of two. Mrs. B. got along with the parents and provided child care for Nathaniel throughout his life. Neither child had any reported medical problems or developmental delays. Nathaniel completed a mental health assessment in July 2017, and was seeing a therapist weekly. Initially, he had frequent melt downs and struggled to control his anger. He had made improvements and his tantrums had significantly decreased. Both children were reportedly happy with Mrs. B. Fabian told Mrs. B. he did not want to visit his parents. The agency opined that they were likely to be adopted and it would not be detrimental to them to terminate parental rights.

Viviana meanwhile continued to struggle with sexualized and parentified behavior and overall refusal to comply with the most basic of rules. She took on the role of the leader during visitation and was not always amenable to requests and directions with regard to her behavior. George continued to struggle with placement and was receiving the highest level of mental health support. George and Noel were participating in counseling and the agency hoped to soon begin therapeutic sibling visits. Viviana, George, and Noel did not want to be adopted. George and Noel wanted to remain in their foster home and visit their parents more frequently.

On December 14, 2017, separate counsel appeared for Viviana, Noel and George (siblings' counsel), and Nathaniel and Fabian (minors' counsel). The juvenile court continued the section 366.26 hearing to February 15, 2018.

In January 2018, siblings' counsel filed modification petitions asking the juvenile court "to recognize the significant sibling relationship" between Nathaniel and Fabian and their older siblings, Noel, George, and Viviana. The juvenile court ordered that the matter be heard at the time of the section 366.26 hearing. That same month, the social worker discussed adoption with Nathaniel and Fabian. Nathaniel understood that adoption meant someone else would be his parent. He wanted Mrs. B., whom he called "Mom," to be his parent. He liked sibling visits but not with Viviana because she was "mean." He liked visiting his parents and siblings except for Viviana. Mrs. B. said Nathaniel was emotional about his family situation. He was anxious before court dates and after visits and misbehaved. Fabian, on the other hand, did not display any emotion about being separated from his parents and did not understand the concept of adoption.

The combined hearing pursuant to sections 388 and 366.26 was conducted over five sessions beginning on February 15, 2018. The parents appeared with counsel. Noel and George were present. Viviana was still a runaway although her attorney stated she intended to appear at the hearing.

The juvenile court granted the motion submitted by siblings' counsel confirming their substantial relationship with Fabian and Nathaniel. The court made clear, however, that it was not making the finding requested in the petitions but rather only that the matter could be raised during the hearing.

Mother testified that by June 2014, she had custody of Viviana, Noel, George, Nathaniel, and Fabian. The older boys, Isaac, 19 at the time of the hearing, and Joseph, 18, lived with her and father. Prior to the children's removal, the family engaged in various activities including going to a nearby park to walk on the trail, ride bicycles, and play on the park equipment. The children attended church and celebrated their birthdays at Great America or Gilroy Gardens. If that was cost prohibitive, mother celebrated their birthdays by organizing a barbeque and renting a jumper. Father helped the children get ready for school while mother fed Fabian in the kitchen. In addition to these activities, Noel, George, Nathaniel, and Fabian played basketball, rode bicycles, swam in the backyard pool and even slept together in the living room on stacks of blankets which mother described as "pallets." The family also generally ate dinner together. Mother introduced multiple photographs of the family engaged in various activities and outings.

Mother described her relationships with Nathaniel and Fabian as very close. Nathaniel gave her the strength to deal with having her other children out of her care and he lived with her in the clean and sober residence. She spent a lot of time with Fabian when the other children were in school. Fabian called her "mother" and Nathaniel called her "mom." They greeted her at visits by running to her with a smile and giving her a hug. Nathaniel and Fabian were excited to see their siblings, and everybody played games, talked about school, and ate snacks.

Mother said she had a "very emotional bond with Nathaniel," stating, "When he hurts, I hurt. When he laughs, I laugh." She said essentially the same about her relationship with Fabian, her "last child," which she likened to "having your first baby."

Mother did not want her parental rights to Nathaniel or Fabian terminated as it would “be dividing us as a family” and “would be creating emotional despair.”

Mother testified that Viviana and Fabian had an “emotional attachment.” Viviana helped Fabian bathe and helped mother teach him to ride a scooter. She rejoiced with mother when he succeeded in riding it. Viviana was not quite as close to Nathaniel but still played with and looked after him and made sure he was safe. Noel and Fabian did a lot together. George was close with Fabian and Nathaniel. They played video games together, swam in the family pool, played on the backyard trampoline and rode bikes. Prior to the current detention, all the children spent most of their time together.

Father testified that Nathaniel and Fabian called him “Dad.” He was their protector. He visited them once a month at the agency visitation facility. The children were always happy to see him and mother and greeted them with hugs. When the children lived at home, father cared for them by cooking for them and taking them to school and medical and dental appointments. In addition, all the children were bonded to each other, especially the four boys who swam, played video games, and slept together on pallets in the living room. He disagreed with the recommendation to terminate his parental rights.

Viviana testified she and Fabian were very close and spent time together in her room talking about his feelings, going to the park, and doing dishes together. She told him she loved him because she would run away and be gone for a while and she wanted him to know that she was his sister. She was not as close to Nathaniel because her aunt and uncle told her that Nathaniel’s birth was her parents’ attempt to start a new family. Consequently, she initially treated him differently but later came to realize that he was her brother and she loved him.

Viviana testified that Nathaniel and George were very close, more so than Nathaniel and Noel. However, they were “all one” when they were together. She had a lot of special memories of her brothers. When visits ended, Nathaniel got quiet and

stared as if he missed his brothers. Fabian used to say, “I want to go home” and “When are we going home?” She did not support her brothers being adopted because it would remove the little bit of hope they had. She had not visited her brothers since January 8, 2018, because she did not feel safe in her placement. She said she felt safer on the streets.

Noel testified he had a good relationship with Nathaniel and Fabian. They went to the park, swam, and played on the trampoline together. He also watched over Fabian when George and Nathaniel were doing other things. He and the other three boys would go to a friend’s house and he and George and Nathaniel would stay overnight. Fabian couldn’t stay because he was too young. He would be sad if Nathaniel and Fabian were adopted and it would be dividing the four boys.

George testified he and his brothers were all very close. They played together, making a fort with the furniture, jumping on the trampoline, swinging, and climbing on a big rock. They played video games, slept together, and went to a friend’s house. Every time Nathaniel and Fabian saw him they hugged him and told him they loved him. They were not sad when the visit ended because they were “good” with their foster mother. If his brothers were adopted, he would feel “empty.”

The agency argued the evidence did not establish a strong sibling relationship between Nathaniel and Fabian and their older siblings, pointing to the significant age difference between them. When Viviana, Noel, and George returned to their parents’ custody in 2014, Viviana was 12 years old, Noel was 10, and George was eight or nine, while Nathaniel was three and Fabian was just over one year. As a result, though they lived in the same home, they did not have common childhood experiences. In addition, Viviana was more of a caretaker than a sibling to the younger two. Further, county counsel argued, even if a strong sibling relationship existed, the evidence only showed that it would be detrimental to the older three children. There was no evidence it would be detrimental to Nathaniel and Fabian, which was what the law requires to find the

exception. As to the beneficial parent-child relationship exception, county counsel argued the evidence was that Nathaniel and Fabian enjoyed visits with their parents on some level but liked living with their foster mother. Nathaniel stated he was not particularly happy to visit Viviana and wanted to be adopted. He had an established relationship with Mrs. B. Additionally, there was no evidence offered such as expert testimony or psychological evidence to support a finding it would be detrimental to Nathaniel and/or Fabian to terminate parental rights.

Minors' counsel agreed with the agency that neither the sibling nor the beneficial parent-child relationship exception was applicable. Counsel pointed out there was no bonding study offered to show anything more than that the children played with each other occasionally. Moreover, counsel argued, Nathaniel and Fabian's well-being would be promoted by adoption.

Siblings' counsel argued that the sibling relationship exception should be applied. Counsel noted that all of the children lived in the same home for a period of time, shared common experiences, and were strongly bonded.

Mother's counsel argued mother cared for Nathaniel and Fabian for most of their lives and regularly visited them when they were out of her custody. Severing that relationship would be detrimental to them. Counsel further argued that the siblings lived together for over two and a half years and shared multiple common experiences, including riding bikes, swimming, going to the park, playing on the trampoline, and having special birthdays and holidays. As such, the four boys especially shared a "strong brotherly bond." Counsel argued the evidence supported application of the sibling and beneficial parent-child relationship exceptions to adoption.

Father's counsel joined in the arguments of mother and the siblings. Counsel acknowledged that a bonding study had not been conducted but asserted that none was required as there was ample testimony regarding the familial bonds. In addition, father fulfilled a parental role by taking the children to school, protecting them, playing with

them, and going on family outings and vacations. Counsel argued that Nathaniel and Fabian indicated they wished to continue having visits with their parents and siblings. Counsel asserted that, based upon all the evidence, including the photographs of the family together, the best interests of Nathaniel and Fabian would not be served by cutting them off from their family. Therefore, both exceptions to adoption were established.

Prior to ruling, the juvenile court addressed the parent-child and sibling relationships, stating,

“[I]t’s clear that there’s love in this family. There’s love for the parents for the children, the children for the parents. That’s not the issue before the Court. [¶] ... I can tell you that I heard the evidence that was presented by [siblings’ counsel] and parents’ counsel, specifically parents’ counsel as it relates to the family. And the family bonds and the evidence that I heard was evidence of not just what we could call weekend parenting or trips to the park, but of a family that loves each other. I heard that evidence. [¶] And the issue before me, specifically, is what’s in the best interest of the two younger children, and we’re dealing specifically with Nathaniel and Fabian.”

The juvenile court terminated parental rights to Nathaniel and Fabian and chose adoption as their permanent plan after finding the children were likely to be adopted and termination of parental rights would not be detrimental to them. The court found that Viviana, George, and Noel were not adoptable and that foster care with a permanent plan of adoption was the most appropriate permanent plan for them. The court denied the siblings’ section 388 petitions and continued visitation for Nathaniel and Fabian with their parents and siblings until the adoption was finalized.

DISCUSSION

Section 366.26 governs the proceedings at which the juvenile court must select a permanent placement for a dependent child. The express purpose of a section 366.26 hearing is “to provide stable, permanent homes” for dependent children. (§ 366.26, subd. (b).) If the court determines it is likely the child will be adopted, the court must terminate parental rights and place the child for adoption unless the parent opposing termination

can demonstrate one of the enumerated statutory exceptions applies. (§ 366.26, subd. (c)(1)(A) & (B).)

“The Legislature has thus determined that, where possible, adoption is the first choice. ‘Adoption is the Legislature’s first choice because it gives the child the best chance at [a full] emotional commitment from a responsible caretaker.’ [Citation.] ‘Guardianship, while a more stable placement than foster care, is not irrevocable and thus falls short of the secure and permanent future the Legislature had in mind for the dependent child.’” (*In re Celine R.* (2003) 31 Cal.4th 45, 53.) “At this stage of the dependency proceedings, ‘it becomes inimical to the interests of the minor to heavily burden efforts to place the child in a permanent alternative home.’ [Citation.] The statutory exceptions merely permit the court, in *exceptional* circumstances [citation], to choose an option other than the norm, which remains adoption.” (*Ibid.*)

Appellants contend the beneficial parent-child and sibling relationship exceptions apply in their case. (§ 366.26, subd. (c)(1)(B)(i), (v).)

Beneficial Parent-Child Relationship Exception

The beneficial parent-child relationship exception applies where the evidence supports “a compelling reason for determining that termination would be detrimental to the child [because the parent maintained] ... [¶] ... regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).)

The nature of the relationship between the parent and child is key in determining the existence of a beneficial parent-child relationship; it is not sufficient to show that the child derives some benefit from the relationship or shares some “‘emotional bond’” with the parent. (*In re K.P.* (2012) 203 Cal.App.4th 614, 621.) Rather, “[t]o overcome the preference for adoption and avoid termination of the natural parent’s rights, the parent must show that severing the natural parent-child relationship would deprive the child of a *substantial*, positive emotional attachment such that the child would be *greatly* harmed.

[Citations.] A biological parent who has failed to reunify with an adoptable child may not derail an adoption merely by showing the child would derive *some* benefit from continuing a relationship maintained during periods of visitation with the parent.

[Citation.] A child who has been adjudged a dependent of the juvenile court should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be beneficial to some degree, but that does not meet the child’s need for a parent.” (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.)

Factors relevant to the existence of a beneficial parent-child relationship include the age of the child, the portion of the child’s life spent in the parent’s custody, the positive or negative effect of interaction between parent and child and the child’s particular needs. (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 643.) “Because a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child’s needs, it is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.)

The juvenile court’s decision that a parent has not satisfied his or her burden of proving the statutory exception may be based on any or all of the component determinations—whether the parent has maintained regular visitation, whether a beneficial parental relationship exists, and whether the existence of that relationship constitutes “a compelling reason for determining that termination would be detrimental to the child.” (§ 366.26, subd. (c)(1)(B); *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315 (*Bailey J.*)). When the juvenile court finds the parent has not maintained regular visitation or established the existence of the requisite beneficial relationship, our review is limited to determining whether the existence compels a finding in favor of the parent on this issue as a matter of law. (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1528 (*I.W.*) [“where the issue on appeal turns on a failure of proof at trial, the question for a reviewing court becomes whether the evidence compels a finding in favor of the

appellant as a matter of law.”) The juvenile court’s determination that the benefit to the child of preserving parental rights is not sufficiently compelling is a “‘quintessentially’ discretionary decision, which calls for the juvenile court to determine the *importance* of the relationship in terms of the detrimental impact that its severance can be expected to have on the child and to weigh that against the benefit to the child of adoption.

[Citation.] Because this component of the juvenile court’s decision is discretionary, the abuse of discretion standard of review applies.” (*Bailey J.*, *supra*, 189 Cal.App.4th at p. 1315.)

Appellants (mother and father) contend they satisfied their burden of showing a beneficial parent-child relationship existed between them and Nathaniel and Fabian. They further contend the juvenile court abused its discretion in determining the benefit of adoption outweighed the detriment of severing that relationship. We conclude they failed to show as a matter of law they filled a parental role and find no abuse of discretion.

Here, it is significant, as appellants assert, that Nathaniel and Fabian lived under their care for significant portions of their lives; Nathaniel for nearly six of his seven years and Fabian for four of his five years before being removed in February 2017. It is also undisputed that appellants regularly visited and maintained contact with the children and established through testimony they shared a loving bond with them. However, appellants visited the children once a month under close supervision for the year preceding the section 366.26 hearing. Consequently, they were not in a position to provide the children “the day-to-day interaction, companionship and shared experiences” indicative of a parent-child relationship (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575) or establish as a matter of law that the beneficial parent-child relationship envisioned by the statute existed.

Even if appellants had established the existence of a beneficial parent-child relationship, they cannot show that the juvenile court abused its discretion in finding that the relationship between them and the children did not constitute a “compelling reason”

for finding that adoption would be detrimental to the children. Appellants presented no evidence at the hearing that the children would be harmed by terminating parental rights. The agency, on the other hand, presented evidence the children were happy and doing well in Mrs. B.'s care. Consequently, the juvenile court could reasonably conclude the benefits of adoption outweighed any detriment the children might suffer as a result of the termination of parental rights.

Sibling Relationship Exception

The sibling relationship exception applies where the evidence supports “a compelling reason for determining that termination would be detrimental to the child [because] [¶] ... [¶] [t]here would be substantial interference with the child’s sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child’s best interest, including the child’s long-term emotional interest, as compared to the benefit of legal permanence through adoption.” (§ 366.26, subd. (c)(1)(B)(v).)

The purpose of the sibling exception is to preserve longstanding sibling relationships that serve as “anchors for dependent children whose lives are in turmoil.” (*In re Erik P.* (2002) 104 Cal.App.4th 395, 404.) “To show a substantial interference with a sibling relationship the parent [or sibling granted standing] must show the existence of a significant sibling relationship, the severance of which would be detrimental to the child. Many siblings have a relationship with each other, but would not suffer detriment if that relationship ended. If the relationship is not sufficiently significant to cause detriment on termination, there is no substantial interference with that relationship.” (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 952, fn. omitted (*L.Y.L.*)). The court should consider “the nature and extent of the relationship, including whether the child and sibling were raised in the same house, shared significant common experiences

or have existing close and strong bonds. [Citation.] If the court determines terminating parental rights would substantially interfere with the sibling relationship, the court is then directed to weigh the child’s best interest in continuing that sibling relationship against the benefit the child would receive by the permanency of adoption.” (*Ibid.*) “[T]he concern is the best interests of the child being considered for adoption, not the interests of that child’s siblings.” (*In re Naomi P.* (2005) 132 Cal.App.4th 808, 822 (*Naomi P.*)). “The court must balance the beneficial interest of the child in maintaining the sibling relationship, which might leave the child in a tenuous guardianship or foster home placement, against the sense of security and belonging adoption and a new home would confer.” (*L.Y.L.*, *supra*, at p. 951.)

As with the exception for a parent-child relationship, the parent or a sibling granted standing has the burden of proving the statutory exception for sibling relationships applies. (*In re Elizabeth M.* (2018) 19 Cal.App.5th 768, 781.) The court’s decision that a parent has not carried this burden may be based on either or both of two component determinations—whether a beneficial sibling relationship exists and whether the existence of that relationship constitutes “a compelling reason for determining that termination would be detrimental to the child.” (§ 366.26, subd. (c)(1)(B); *Bailey J.*, *supra*, 189 Cal.App.4th at p. 1314.) When the juvenile court finds the parent has not established the existence of the requisite beneficial relationship, our review is limited to determining whether the evidence compels a finding in favor of the parent on this issue as a matter of law. (*I.W.*, *supra*, 180 Cal.App.4th at pp. 1527-1528.) When the juvenile court concludes the benefit to the child derived from preserving the sibling relationship is not sufficiently compelling to outweigh the benefit achieved by the permanency of adoption, we review that determination for abuse of discretion. (*Bailey J.*, *supra*, 189 Cal.App.4th at pp. 1314-1315.)

Appellants (father and minors) contend Nathaniel and Fabian’s strong bond with their siblings fostered by the two years they lived with them and their significant shared

experiences compelled a finding the sibling relationship exception existed. They acknowledge the juvenile court had to weigh the best interests of Nathaniel and Fabian, not the siblings' interests, in determining whether to preserve the sibling relationship. Nevertheless, father contends, relying on *Naomi P.*, *supra*, 132 Cal.App.4th 808, that the siblings' resistance to the adoption implicated Nathaniel's and Fabian's long-term interests in maintaining the sibling relationship and the court's failure to give it proper weight was error. We find *Naomi P.* factually and procedurally distinguishable.

The child in *Naomi P.* was placed in a legal guardianship with a relative and had weekly visits with her siblings in her grandmother's home, where her siblings lived, sometimes spending the whole weekend with them. (*Naomi P.*, *supra*, 132 Cal.App.4th at pp. 812, 820.) That guardianship was terminated when the relative guardian was alleged to have neglected her own children. (*Id.* at p. 813.) After the child was moved to the home of a family friend who wanted to adopt her, frequent visits with her siblings and grandmother continued with some of those visits lasting several hours to the entire day. (*Id.* at pp. 818-819.) At the section 366.26 hearing, the juvenile court found the sibling relationship exception applied and ordered a permanent plan of legal guardianship, based on the strength and importance of the children's relationship with each other and the court's concerns about the foster mother's willingness to maintain that contact. (*Naomi P.*, *supra*, 132 Cal.App.4th at p. 821.) The Court of Appeal, applying a substantial evidence standard, rejected a contention by the social services agency that the juvenile court should have terminated parental rights. (*Id.* at p. 824.)

Naomi P. is factually distinguishable because the juvenile court considered the demeanor of the older siblings while testifying and their obvious love for their little sister as a reflection not only of their love for her but also of her love for them, which she was too young to verbalize. The court recognized the situation had to be considered from Naomi's point of view as well as from the siblings' point of view, stating "'These are descriptions of a true sibling relationship.'" (*Naomi P.*, *supra*, 132 Cal.App.4th at p.

821.) Here, on the other hand, Nathaniel, unlike Naomi, was old enough to express his sentiments about his siblings. He loved them and wanted to visit his brothers but was happy living apart from them. Fabian, like Naomi, was too young to express a preference. However, George's testimony was revealing on this point when he said Nathaniel and Fabian were not sad when visits ended because they were "good" with Mrs. B. In other words, they enjoyed visiting their siblings but were happy to return home with Mrs. B.

More significantly for our purposes, *Naomi P.* is procedurally distinguishable because it involved a different burden of proof and standard of review; the order under review in *Naomi P.* was that the sibling exception *applied*. (*Naomi P.*, *supra*, 132 Cal.App.4th at p. 824.) That order was entitled to deference and could only be reversed on appeal if the juvenile court abused its discretion or made a factual finding unsupported by substantial evidence. (See *Bailey J.*, *supra*, 189 Cal.App.4th at pp. 1314-1315.) To say the juvenile court's order was properly affirmed based on a substantial evidence standard is not to say the juvenile court in *Naomi P.* would have erred in finding there was insufficient evidence to support the sibling relationship exception as a matter of law. Thus, *Naomi P.* does not support father's claim the sibling exception compels reversal in the case before us.

Minors contend Nathaniel and Fabian's long-term emotional wellbeing was best served by continuing the sibling relationship through a legal guardianship. However, they fail to cite any legal authority that would compel a different result in this case. Further, they fail to show that even if termination of parental rights would substantially interfere with the sibling relationship that it would be detrimental to Nathaniel and Fabian. As discussed, Nathaniel and Fabian were thriving in Mrs. B.'s home and while they enjoyed visiting their siblings, they were happy to return to Mrs. B.'s home. The juvenile court was fully justified in finding the sense of security and belonging that

adoption would bring Nathaniel and Fabian outweighed the benefit of the sibling relationship.

DISPOSITION

The April 20, 2018 order of the juvenile court terminating parental rights is affirmed.

SMITH, Acting P.J.

WE CONCUR:

SNAUFFER, J.

DESANTOS, J.